

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TIME WARNER TELECOM OF HAWAII, L.P.,)
dba OCEANIC COMMUNICATIONS)
For Expedited Approval of Financing,)
Or for Exemption.)

DOCKET NO. 03-0414

DECISION AND ORDER NO. 20747

Filed Jan. 9, 2004
At 3:00 o'clock P.M.

Karen Higuchi
Chief Clerk of the Commission

DEPT. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2004 JAN -9 P 3:42

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TIME WARNER TELECOM OF HAWAII, L.P.,) Docket No. 03-0414
dba OCEANIC COMMUNICATIONS)
For Expedited Approval of Financing,) Decision and Order No. 20747
Or for Exemption.)
_____)

DECISION AND ORDER

I.

Introduction

TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic"), requests an expedited order approving the concurrent issuance by Time Warner Telecom, Inc. ("TWTC") of certain financing transactions ("proposed financial transactions").¹ In the alternative, Applicant requests that the commission exempt the proposed financial transactions from commission approval requirements, pursuant to Hawaii Revised Statutes ("HRS") § 269-16.9(e). Moreover, to the extent that Applicant did not satisfy the applicable application requirements, Applicant also requests a waiver of such requirements, pursuant to HRS § 269-16.9(e).

Oceanic served a copy of the application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate,

¹Oceanic's application, filed on December 11, 2003.

by its statement of position, filed on January 6, 2004, states that it does not object to the proposed financial transactions.

II.

Background

A.

Description of Oceanic and Related Entities

Oceanic is a limited partnership organized under the laws of Delaware, authorized to do business in the State of Hawaii ("State"). Oceanic is a provider of interstate and intrastate telecommunications services, including dedicated access (private line) and local exchange services.²

Oceanic's limited partner is TWTC, a publicly held Delaware corporation, who presently holds a 99 per cent limited partnership interest in Oceanic. Time Warner Telecom Holdings, Inc. ("TWTH"), Oceanic's general partner, is itself wholly owned by TWTC.³ An organizational diagram illustrating Oceanic's current ownership is attached to this decision and order as Exhibit "A".

²In Hawaii, Oceanic is authorized to provide intrastate telecommunications services as a reseller and a facilities-based carrier. See Order No. 14842, filed on August 5, 1996, in Docket No. 95-0329.

³TWTH owns Time Warner Telecom Holdings II LLC and Time Warner Telecom General Partnership, who maintains a 1 per cent general partnership interest in Oceanic.

B.

Proposed Financial Transactions

The proposed financial transactions involve TWTC's plans to issue several unsecured notes in which the operating assets of Oceanic will not be encumbered. Specifically, Oceanic represents that it will not issue, guarantee, or pledge its assets to secure the notes to be issued under the proposed financial transactions. Oceanic further states that the proposed financial transactions will have no material adverse impact on its operations, its customers, or the public interest. In fact, Oceanic asserts that it will benefit from such transactions "[b]ecause a portion of the proceeds will be used to repay a portion of [its] existing bank debt," thereby reducing Oceanic's existing secured obligations. Oceanic seeks an expedited approval of the proposed financial transactions "to capitalize on fluctuating financial market conditions."

C.

Consumer Advocate's Position

The Consumer Advocate asserts that "[b]ased on past [c]ommission rulings⁴ and the [c]ommission's responsibility to protect the public interest pursuant to HRS § 269-7(a)," it does not believe Oceanic should be granted an exemption or waiver from

⁴See, *In re AT&T Wireless Services of Hawaii, Inc. et al.*, Docket No. 00-0116, Decision and Order No. 17795 (June 15, 2000); and *In re Honolulu Cellular Telephone Company et al.*, Docket No. 99-0363, Decision and Order No. 17476 (January 14, 2000).

regulatory requirements. Nonetheless, the Consumer Advocate does not object to Oceanic's request for commission approval of the proposed financial transactions, pursuant to HRS § 269-7(a), particularly in light of Oceanic's assertion that its assets are not being encumbered to guarantee the proposed financial transactions.

III.

Discussion

A.

HRS §§ 269-17 and 269-19

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than 12 months. The statute limits the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property, building or construction, or improving the utility's capital facilities or services. HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property.

Upon review and based on Oceanic's representations describing the transactions, we agree with Applicant that the proposed financial transactions do not require commission approval, pursuant to HRS §§ 269-17 and 269-19. In particular, the issuances of the unsecured notes by its ultimate parent,

TWTC, do not result in Oceanic issuing, guaranteeing, pledging, or encumbering any of its property. Thus, for purposes of considering this application, we conclude that the requirements of HRS §§ 269-17 and 269-19 are inapplicable to the proposed financial transactions. However, as discussed below, the commission has jurisdiction to review these transactions and all similar transactions under HRS § 269-7(a).

B.

Approval of the Proposed Financial Transactions

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review all proposed financial transactions of the parent entity or related subsidiaries of a regulated public utility under HRS § 269-7(a).⁵ See, *In re WilTel Communications, LLC*, Docket

⁵Under HRS § 269-7(a), the commission will approve the proposed financial transactions if it is reasonable and consistent with the public interest. *In re ITC^DeltaCom Communications, Inc. et al.*, Docket No. 02-0345, Decision and Order No. 19874 (December 13, 2002); *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications et al.*, Docket No. 00-0354, Decision and Order No. 18220 (November 30, 2000); and *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications*, Docket No. 00-0047, Decision and Order No. 17662 (April 10, 2000). The transactions are reasonable and consistent with the public interest if they will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in the State, as authorized by the commission. See, *In re Ionex Telecommunications, Inc., et al.*, Docket No. 99-0223, Decision and Order No. 17369 (November 8, 1999).

No. 03-0367, Decision and Order No. 20677 (November 25, 2003). Thus, the proposed financial transactions fall under the purview of HRS § 269-7(a).

Upon review of the record in this docket, particularly Oceanic's representations,⁶ we find that the proposed financial transactions will not adversely affect Oceanic's fitness, willingness, and ability to provide intrastate telecommunications services in the State, as authorized by the commission. The proposed transactions are therefore reasonable and in the public interest. Accordingly, we conclude that consistent with our previous rulings cited by the Consumer Advocate, the proposed financial transactions should be approved, pursuant to HRS § 269-7(a).⁷

C.

Waiver of Other Requirements

HRS § 269-16.9(e) also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Moreover, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS

⁶Oceanic represents that the proceeds arising out of the proposed financial transactions will "strengthen Oceanic's financial condition by reducing its secured obligation; and the transaction[s] will not have a negative impact on Oceanic's customers."

⁷In light of the underlying ruling in this docket, we decline to exempt or waive the proposed financial transactions from commission approval requirements.

chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In an effort to provide some flexibility in a competitive telecommunications market and recognizing that time is of the essence to consummate the above-referenced proposed financial transactions, we find that waiver of the provisions of HAR §§ 6-61-101 and 6-61-105 is reasonable and in the public interest. Competition in this instance will serve the same purpose as public interest regulation. *In re Teligent Services, Inc. and TAC License Corp.*, Docket No. 01-0392, Decision and Order No. 19100 (December 10, 2001). Thus, the commission concludes that the applicable filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent that Oceanic's application does not meet all of the filing requirements should be waived.

IV.


Orders

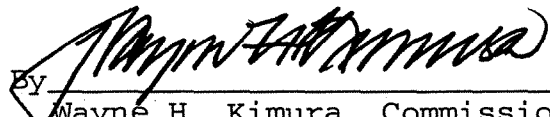
THE COMMISSION ORDERS:

1. The proposed financial transactions, described in the application, are approved, pursuant to HRS § 269-7(a).
2. HAR §§ 6-61-101 and 6-61-105 filing requirements, to the extent applicable, are waived.

DONE at Honolulu, Hawaii this 9th day of January, 2004.

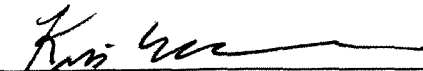
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

03-0414.oc

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20747 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

ROCHELLE D. JONES
VICE PRESIDENT REGULATORY
TIME WARNER TELECOM
14 Wall Street
New York, NY 10005

J. DOUGLAS ING, ESQ.
PAMELA J. LARSON, ESQ.
WATANABE ING KAWASHIMA & KOMEIJI LLP
999 Bishop Street, 23rd Floor
Honolulu, HI 96813



Karen Higashi

DATED: January 9, 2004

Time Warner Telecom Inc. Subsidiary Structure

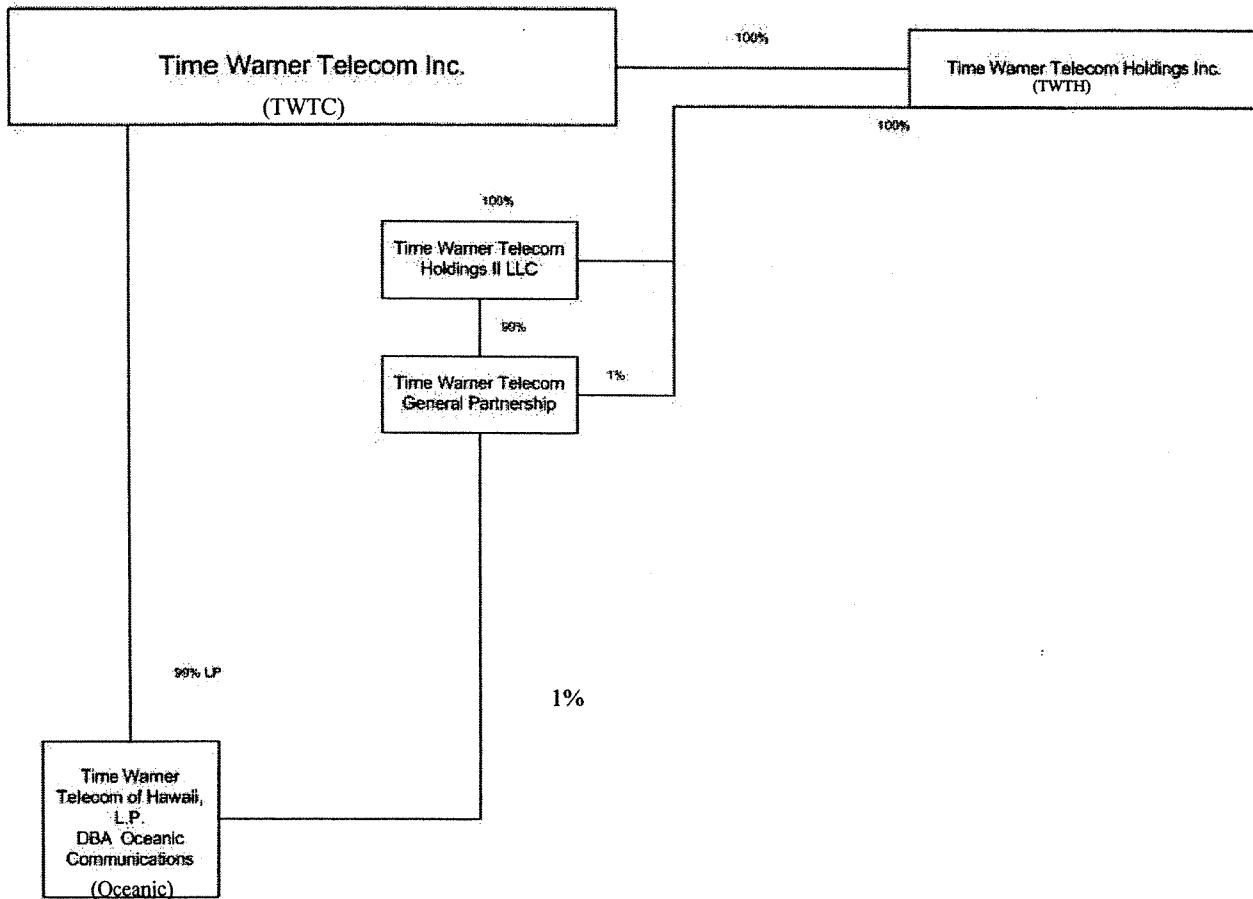


EXHIBIT "A"